



Senate

General Assembly

File No. 765

January Session, 2015

Substitute Senate Bill No. 1063

Senate, May 5, 2015

The Committee on Planning and Development reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE APPLICATION OF PESTICIDES ON MUNICIPAL PLAYGROUNDS AND AUTHORIZING THE USE OF CERTAIN MICROBIALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10-231a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in sections 10-231b to 10-231d, inclusive, [and section 19a-
4 79a,] (1) "pesticide" means a fungicide used on plants, an insecticide, a
5 herbicide or a rodenticide, but does not mean a sanitizer, disinfectant,
6 antimicrobial agent or pesticide bait in a tamper-resistant container, (2)
7 "lawn care pesticide" means a pesticide registered by the United States
8 Environmental Protection Agency and labeled pursuant to the federal
9 Insecticide, Fungicide and Rodenticide Act for use in lawn, garden and
10 ornamental sites or areas. [, and] "Lawn care pesticide" does not
11 include (A) a microbial pesticide or biochemical pesticide that is
12 registered with the United States Environmental Protection Agency,

13 (B) a horticultural soap or oil that is registered with the United States
14 Environmental Protection Agency and does not contain any synthetic
15 pesticide or synergist, (C) a pesticide classified by the United States
16 Environmental Protection Agency as an exempt material pursuant to
17 40 CFR 152.25, as amended from time to time, or (D) a grub control
18 product that is registered with the United States Environmental
19 Protection Agency that does not contain a signal label with a caution,
20 warning or danger indication and, except for such pesticides described
21 in subparagraphs (A) and (C) of this subdivision, is applied only
22 during an emergency application of a lawn care pesticide, as described
23 in section 10-231b, (3) "integrated pest management" means use of all
24 available pest control techniques, including judicious use of pesticides,
25 when warranted, to maintain a pest population at or below an
26 acceptable level, while decreasing the use of pesticides, (4) "microbial
27 pesticide" means a pesticide that consists of a microorganism as the
28 active ingredient, and (5) "biochemical pesticide" means a naturally
29 occurring substance that controls pests by nontoxic mechanisms.

30 Sec. 2. (NEW) (*Effective October 1, 2015*) (a) As used in this section:

31 (1) "Pesticide" means a fungicide used on plants, an insecticide, a
32 herbicide or a rodenticide but does not mean a sanitizer, disinfectant,
33 antimicrobial agent or a pesticide bait in a tamper-resistant container;

34 (2) "Microbial pesticide" means a pesticide that consists of a
35 microorganism as the active ingredient;

36 (3) "Biochemical pesticide" means a naturally occurring substance
37 that controls pests by nontoxic mechanisms;

38 (4) "Lawn care pesticide" means a pesticide registered by the United
39 States Environmental Protection Agency and labeled pursuant to the
40 federal Insecticide, Fungicide and Rodenticide Act for use in lawn,
41 garden and ornamental sites or areas. "Lawn care pesticide" does not
42 include (A) a microbial pesticide or biochemical pesticide that is
43 registered with the United States Environmental Protection Agency,
44 (B) a horticultural soap or oil that is registered with the United States

45 Environmental Protection Agency and does not contain any synthetic
46 pesticide or synergist, (C) a pesticide classified by the United States
47 Environmental Protection Agency as an exempt material pursuant to
48 40 CFR 152.25, as amended from time to time, or (D) a grub control
49 product that is registered with the United States Environmental
50 Protection Agency that does not contain a signal label with a caution,
51 warning or danger indication;

52 (5) "Certified pesticide applicator" means a pesticide applicator with
53 (A) supervisory certification under section 22a-54 of the general
54 statutes, or (B) operational certification under section 22a-54 of the
55 general statutes, who operates under the direct supervision of a
56 pesticide applicator with such supervisory certification;

57 (6) "Controlling authority" means the executive head of the
58 municipal department responsible for the maintenance of a
59 playground or such person's designee. "Controlling authority" does
60 not include the executive head of any municipal department
61 responsible for the maintenance of any school;

62 (7) "Municipal playground" means any outdoor area owned or
63 controlled by any town, city or borough, consolidated town and city or
64 consolidated town and borough that is designated, dedicated or
65 customarily used for playing by children, including, but not limited to,
66 any such outdoor area that contains any swing set, slide, climbing
67 structure, playset or device or object upon which children play.
68 "Municipal playground" does not include any: (A) Playground located
69 on the premises of any school, or (B) athletic field; and

70 (8) "Athletic field" means any field or open space used only for
71 sporting activities.

72 (b) No person other than a certified pesticide applicator shall apply
73 pesticide within any municipal playground except a person other than
74 a certified pesticide applicator may make an emergency application of
75 pesticide to eliminate an immediate threat to human health, including,
76 but not limited to, the elimination of mosquitoes, ticks and stinging

77 insects, provided (1) the controlling authority determines such
78 emergency application of pesticide to be necessary, (2) the controlling
79 authority deems it impractical to obtain the services of a certified
80 pesticide applicator, and (3) such emergency application of pesticide
81 does not involve a restricted use pesticide, as defined in section 22a-47
82 of the general statutes.

83 (c) No person shall apply a lawn care pesticide on the grounds of
84 any municipal playground, except an emergency application of
85 pesticide may be made to eliminate an immediate threat to human
86 health, including, but not limited to, the elimination of mosquitoes,
87 ticks and stinging insects, provided (1) the controlling authority
88 determines such emergency application of pesticide to be necessary,
89 and (2) such emergency application of pesticide does not involve a
90 restricted use pesticide, as defined in section 22a-47 of the general
91 statutes.

92 (d) Prior to providing for any application of pesticide on the
93 grounds of any municipal playground, the controlling authority shall,
94 within the existing budgetary resources available to the controlling
95 authority, provide public notice of such application not later than
96 twenty-four hours prior to such application of pesticide. Such public
97 notice shall be posted on the Internet web site of the applicable
98 municipality. If a controlling authority determines an emergency
99 application of pesticide to be necessary pursuant to subsection (b) or
100 (c) of this section, such notice shall be given as soon as practicable.
101 Notice under this subsection shall include (1) the name of the active
102 ingredient of the pesticide being applied, (2) the target pest, (3) the
103 location of the application of pesticide on the grounds of the municipal
104 playground, and (4) the date or proposed date of the application of
105 pesticide. A copy of each notice of such application of pesticide at a
106 municipal playground shall be maintained by the controlling authority
107 for a period of five years from the date of application of the pesticide
108 and available to members of the public.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	10-231a
Sec. 2	<i>October 1, 2015</i>	New section

Statement of Legislative Commissioners:

In section 2(a)(1), "tamper-proof" was changed to "tamper-resistant" for consistency with section 1(1); in section 2(d), a reference to an emergency application pursuant to "subsection (b)" was added for accuracy; and in section 2(d)(3), references to a park, playground on school premises, athletic field and municipal green were deleted since those locations had been deleted from the section.

PD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 16 \$	FY 17 \$
Various Municipalities	Cost	Potential Minimal	Potential Minimal

Explanation

The bill prohibits the non-emergency application of certain pesticides in certain municipal parks and playgrounds. It also prohibits anyone other than certified pesticide applicators from applying pesticides in non-emergency situations.

There is a potential cost, expected to be minimal, to any municipality that does not have a certified pesticide applicator and must either: 1) pay for a current employee to obtain such certification; or 2) contract with a certified pesticide applicator.

As toxic free products used under the Integrated Pest Management plan recommended by the Environmental Protection Agency are available at similar costs¹ to those containing pesticides, this provision of the bill is not anticipated to result in a fiscal impact.

Additionally, the bill requires municipalities to post notice on their Internet web sites within 24 hours of certain pesticide applications. This also is not anticipated to result in a fiscal impact.

The Out Years

¹<http://www.epa.gov/pesticides/ipm>

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1063*****AN ACT CONCERNING THE APPLICATION OF PESTICIDES ON MUNICIPAL PLAYGROUNDS AND AUTHORIZING THE USE OF CERTAIN MICROBIALS.*****SUMMARY:**

This bill establishes restrictions on applying pesticide, including lawn care pesticide, to municipal playgrounds. It generally (1) requires certified pesticide applicators to apply pesticide and (2) bans lawn care pesticide applications. But it allows emergency applications to eliminate immediate threats to human health. The bill also creates electronic public notice requirements for these applications.

Additionally, the bill exempts certain products from the existing ban on nonemergency application of lawn care pesticide on the grounds of public or private preschools or schools with students in grade eight or lower. It also specifies that to be exempt from the law's pesticide application requirements for schools, sanitizers, disinfectants, antimicrobial agents, and pesticide baits must be in tamper-resistant containers.

Lastly, the bill makes a technical change, removing an unnecessary reference to the day care center statutes.

EFFECTIVE DATE: October 1, 2015, except the lawn care pesticide exemption for school ground application takes effect upon passage.

PESTICIDE USE AT MUNICIPAL PLAYGROUNDS***Scope of Application Restrictions***

The bill's restrictions for pesticide and lawn care pesticide application on municipal playgrounds apply to outdoor areas designated, dedicated, or customarily used for playing by children.

This includes areas with a swing set, slide, climbing structure, playset, or device or object that children play on. The bill specifies that it does not apply to (1) fields or open space used only for sporting activities and (2) playgrounds on school premises.

The restrictions apply to areas owned or controlled by a town, city, borough, consolidated town and city, or consolidated town and borough.

Non-Lawn Care Pesticide Application

Under the bill, only Department of Energy and Environmental Protection (DEEP)- certified pesticide applicators may apply pesticide on municipal playgrounds, except in an emergency (see BACKGROUND). Anyone may apply pesticide in an emergency to eliminate an immediate human health threat, such as from mosquitoes, ticks, or stinging insects, if:

1. the executive head of the municipal department responsible for the playground's maintenance or his or her designee (the "controlling authority") finds the application is necessary,
2. he or she thinks it is impractical to obtain a certified applicator, and
3. the application does not involve a U.S. Environmental Protection Agency (EPA)- or DEEP-restricted use pesticide.

For purposes of applying pesticide on municipal playgrounds, a "pesticide" is a fungicide used on plants, an insecticide, an herbicide, or a rodenticide, but not a sanitizer, disinfectant, antimicrobial agent, or pesticide bait in a tamper-resistant container.

Lawn Care Pesticide Application

The bill bans the application of lawn care pesticide on a municipal playground, absent a human health emergency.

For an emergency lawn care pesticide application to occur under the bill, there must be an immediate human health threat, such as

mosquitoes, ticks, or stinging insects. The controlling authority must determine the application is necessary, and the application cannot involve an EPA- or DEEP-restricted use pesticide.

For these municipal applications, a “lawn care pesticide” is a pesticide registered by EPA and labeled according to federal law for use in lawns, gardens, and ornamental sites or areas. It does not include:

1. EPA-registered microbial or biochemical pesticides,
2. horticultural soaps or oils registered with EPA and without any synthetic pesticide or synergist (enhancer of pesticide properties),
3. certain pesticides classified by EPA as exempt material (see BACKGROUND), and
4. EPA-registered grub control products without a signal label indicating caution, warning, or danger.

Thus, the bill allows the application of the above-listed pesticides.

Under the bill, a “microbial pesticide” is a pesticide that has a microorganism as the active ingredient, and a “biochemical pesticide” is a naturally occurring substance that controls pests by nontoxic means.

Notice

Before any pesticide can be applied to a municipal playground, the bill requires at least 24 hours advance public notice. But if the controlling authority determines an emergency application of pesticide or lawn care pesticide is needed, the notice must be given as soon as practicable.

The bill requires the notice to be made by the controlling authority within existing budgetary resources. The notice must be posted on the municipality’s website and include the:

1. pesticide's active ingredient,
2. target pest, and
3. date or proposed date and location of the application.

Under the bill, the controlling authority must keep a copy of each notice for five years from the pesticide application date. All copies must be available to the public.

PESTICIDE USE ON SCHOOL GROUNDS

Non-Lawn Care Pesticides

Under current law for applying pesticide at schools, a "pesticide" is a fungicide used on plants, insecticide, herbicide, or rodenticide but not a sanitizer, disinfectant, antimicrobial agent, or pesticide bait. The bill specifies that, to be excluded from the definition and exempt from the law's pesticide application requirements for schools, the sanitizers, disinfectants, antimicrobial agents, and baits must be in tamper-resistant containers.

Lawn Care Pesticides

Existing law prohibits the use of lawn care pesticide on the grounds of preschools and schools with students in grade eight or lower, absent a human health emergency.

Under the bill, lawn care pesticide means the same as for municipal playground applications (see above). The bill thus allows the application of these products on school grounds, with one exception. The grub control products that are horticultural soaps or oils may only be used in human health emergencies, as determined by the local health director, public health or DEEP commissioner, or, in the case of a public school, a superintendent.

BACKGROUND

Legislative History

The Senate referred the bill (File 559) to the Planning and Development Committee, which reported a substitute bill that (1)

added certain grub control products to the school lawn care pesticide exemption and (2) removed athletic fields, greens, and parks from the bill's municipal pesticide application restrictions.

Pesticide Applicator Certification

Under the Connecticut Pesticide Control Act (CGS § 22a-46 et seq.), anyone who uses or supervises the use of a restricted use pesticide in the state must have a private or commercial certificate or permit unless the use is directly supervised by a certified applicator.

Exempt Pesticides

Certain pesticides and pesticide classes do not need regulation under the federal Insecticide, Fungicide, and Rodenticide Act. They include:

1. pheromones and similar compounds used in pheromone traps;
2. preservatives for biological specimens (e.g., embalming fluids);
3. products consisting of food to attract pests;
4. natural cedar;
5. minimum-risk pesticides (i.e., containing certain active ingredients); and
6. treated articles or substances (40 CFR 152.25).

Related Bills

sHB 6897, File 184, reported favorably by the Children's Committee, contains a similar provision exempting certain products from the school pesticide application law's definition of lawn care pesticide.

sSB 366, File 543, reported favorably by the Environment Committee, exempts certain products, but not the grub control products, from the school pesticide application law's definition of lawn care pesticide.

sHB 6035, File 518, reported favorably by the Environment Committee, exempts certain products, but not the grub control products, from the school pesticide application law's definition of lawn care pesticide.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 17 Nay 12 (03/20/2015)

Planning and Development Committee

Joint Favorable Substitute

Yea 12 Nay 7 (04/20/2015)